

# Memorandum

To: Honorable Judy Chu, Ph.D., Chair  
Honorable Betty T. Yee, Vice Chairwoman  
Honorable Bill Leonard  
Honorable Michelle Steel  
Honorable John Chiang

Date : June 27, 2008

From: Kristine Cazadd  
Chief Counsel



Subject: **July 8, 2008 Board Meeting - Customer Services and Administrative Efficiency Committee**

## **Clarification of Board Members' Decision on the Administrative Settlement Program Policies and Procedures**

As indicated in staff's report on the Board's Administrative Settlement Program presented at the June 24, 2008, Board Meeting, the Board is authorized by statute to settle disputed civil tax or fee liabilities that are the subject of protests, appeals, or claims for refund. The statutes contemplate that the Board may issue rules or guidelines to implement and administer the program.<sup>1</sup>

Legal staff has been requested to review and comment on the Board's decision on June 24, 2008, with regard to when the Settlement Section may consider a settlement offer during the administrative appeal process on a Petition for Rehearing. Specifically, staff has been requested to address the issue of whether an offer may be considered after a Petition for Rehearing has been filed by a taxpayer or feepayer, but before the Board has decided whether to grant or deny the Petition for Rehearing.

Staff understood that the policy language that the Board approved on June 24, 2008, would be interpreted to allow consideration of an offer before the Board has voted on a Petition for Rehearing. Concern has been expressed that this interpretation may, however, encourage taxpayers and fee payers to delay submitting offers of settlement until after the Board has decided their cases, thereby undermining one of the main purposes of the Settlement Program, which is to accelerate the resolution of disputes and collection of revenue. Also, this policy may be perceived as placing the Settlement Section in a position of undercutting a Board's decision shortly after the decision is rendered.

On the other hand, allowing consideration of such offers before a Petition for Rehearing is decided avoids the risk of future collection and litigation costs, as well as the possibility of an adverse court decision and bad precedent. Also, Settlement staff would consider the Board's initial decision in a case against the taxpayer or fee payer as a risk weighing against the taxpayer or fee payer and would also consider the standards for granting or denying a Petition for Rehearing in addition to considering whether the taxpayer or fee payer may prevail before the Board or in a court on the substantive tax or fee issues. In other words, Settlement staff would be undertaking a "litigation risk analysis," as is currently undertaken with regard to all matters in the Settlement Program, and

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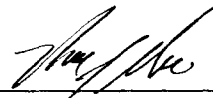
<sup>1</sup> Rev. & Tax Code § 7093.5 authorizes settlement of sales and use tax cases. Statutes authorizing settlement of special tax and fee cases are comparable.

would not be taking "sides" for or against the Board's original decision or the taxpayer's or feepayer's position, but would only be analyzing whether there are still hazards of litigation.

Staff respectfully requests that the Board provide clarification and direction. In the event that no further direction is provided, if a case appears conducive to settlement, then staff may possibly consider an offer submitted after a Petition for Rehearing has been filed but prior to the Board's decision on whether to grant or deny the Petition.

If you have any questions on the above, please contact me at (916) 445-4380 or Assistant Chief Counsel, Ms. Jean Ogrod, at (916) 324-2614.

Approved:

  
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Ramon J. Hirsig  
Executive Director

KC:JO:gm

J:/ChiefCounsel/Finals/SettlementProgramClarification

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	Mr. Todd Gilman	MIC: 70
	Ms. Jean Ogrod	MIC: 82
	Ms. Elizabeth Abreu	MIC: 82
	Mr. Tim Treichelt	MIC: 82
	Mr. Cornell Yip	MIC: 82